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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,500	10/24/2001	Guy Richards	24180-124005	3373
7590	08/13/2003			9
Matthew E. Leno McDermott, Will & Emery 31st Floor 227 West Monroe Street Chicago, IL 60606			EXAMINER NOLAN, SANDRA M	
		ART UNIT	PAPER NUMBER	

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/046,500

Applicant(s)

RICHARDS ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply****A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**1) Responsive to communication(s) filed on 09 June 2003.2a) This action is **FINAL**.      2b) This action is non-final.3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.**Disposition of Claims**4) Claim(s) 1-50 is/are pending in the application.4a) Of the above claim(s) 1-24 and 42-50 is/are withdrawn from consideration.5) Claim(s) \_\_\_\_\_ is/are allowed.6) Claim(s) 25-41 is/are rejected.7) Claim(s) \_\_\_\_\_ is/are objected to.8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.**Application Papers**9) The specification is objected to by the Examiner.10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. §§ 119 and 120**13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).a) All b) Some \* c) None of:1. Certified copies of the priority documents have been received.2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).a) The translation of the foreign language provisional application has been received.15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.**Attachment(s)**1) Notice of References Cited (PTO-892)4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_2) Notice of Draftsperson's Patent Drawing Review (PTO-948)5) Notice of Informal Patent Application (PTO-152)3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4+7.6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claims***

1. Claims 1-50 are pending.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 17 June 2002 and 27 March 2003 (Paper Nos. 4 and 7, respectively) were considered by the examiner.

***Election/Restrictions***

3. Claims 1-24 and 42-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8 (the response dated 09 June 2003).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 2 of the claim, what does "0.0250.032 inch" mean?

Please clarify.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 25-28 and 30-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt et al (US 5,804,016).

Schmidt teaches multilayer containers made from polypropylene (col. 10, line 38) and having oxygen scavenger internal layers (col. 12, lines 51-53). The outer, or “finish” layer, may be polyethylene terephthalate (col. 8, line 32). The containers are made by stretch blow molding (col. 7, lines 17-36). The performs from which the containers are made have support flanges (col. 9, line 25) and sidewalls that are 13 to 14.5 times thicker than the container made from them (col. 5, line 38). The preform has a flange on the bottom of the neck portion a thickened base and its bottom end is thinner than the upper base-forming portion of the perform (col. 5, lines 3-18). The average panel axial stretch is 3.0 to 3.2 (col. 5, lines 43-46). The perform may have an internal oxygen scavenging layer (col. 12, lines 51-53).

The examiner interprets the description of the bottom of the perform at col. 5 of Schmidt to read on the feature of applicants’ claim 34.

The examiner deems “internal” to mean intermediate.

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Krishnakumar et al (US 5,303,834).

For purposes of this rejection, the examiner assumes that applicants intended to recite "0.0250 to 0.032 inch" in line 2 of claim 29.

Schmidt is discussed above. It fails to teach wall thicknesses of 0.0250 to 0.032 inch.

Krishnakumar teaches squeezable (abstract) containers having wall thicknesses of 0.022 to 0.024 inch (col. 4, line 27).

Since the perform wall thicknesses recited in claim 29 correspond to 0.074-0.120 inch in order to comply with the 2.3X limitation of claim 25, the Krishnakumar perform thicknesses must be the same as applicants'.

The references are analogous because they both deal with performs to be used to make polymeric containers.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the wall thicknesses of Krishnakumar when making the performs of Schmidt in order to produce squeezable containers.

The motivation to employ the wall thicknesses of Krishnakumar in the performs of Schmidt is found in the Krishnakumar abstract, where squeezable containers are discussed.

It is deemed desirable to make containers that are squeezable to facilitate the removal of liquids therefrom.

***Citation as of Interest***

11. Bonnebat et al (US 4,731,266) is noted for teaching polyvinyl alcohol layers placed onto polypropylene containers as external barriers.

***Conclusion***

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan  
Patent Examiner  
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